

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRETT DURANT, On Behalf of Himself and
all other similarly situated,

Plaintiff,

v.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, a foreign
automobile insurance company,

Defendant.

No.: 2-15-CV-01710-RAJ

CLASS ACTION
ORDER FINALLY APPROVING CLASS
ACTION SETTLEMENT AND FINAL
JUDGMENT
[PROPOSED]

This matter having come before the Court on Plaintiff's Unopposed Motion for Attorney Fees and Costs and Incentive Award and Plaintiff's Unopposed Motion for Final Approval of Settlement ("Settlement") of the above captioned matter (the "Litigation") between Plaintiff Brett Durant ("Plaintiff" or "Durant") and Defendant State Farm Mutual Automobile Insurance Company ("Defendant" or State Farm"); and the Court having duly considered the papers and arguments of counsel, the Court hereby finds and orders as follows:

1. All terms and phrases in this Final Judgment not otherwise defined herein shall have the same meaning as ascribed to them in the Parties' Settlement Agreement and Release (Ex. A, Firkins Decl., Dkt. #106) (the "Settlement Agreement").

2. This Court has personal jurisdiction over the Parties and all members of the Settlement Class and subject matter jurisdiction to approve the Settlement Agreement, including all exhibits thereto.

1 3. The Court adopts the class definition agreed upon for the purposes of the proposed
2 settlement, and confirms certification, for purposes of settlement only, of the Settlement Class
3 pursuant to Federal Rule of Civil Procedure 23(b)(3), defined as “all State Farm insureds in the state
4 of Washington who, from April 19, 2008 to June 15, 2018, had a Personal Injury Protection (PIP)
5 claim for medical or hospital benefits denied, terminated or limited by State Farm Mutual
6 Automobile Insurance Company (State Farm) on the grounds that they had reached Maximum
7 Medical Improvement, using an Explanation of Review form referencing Reason Codes SF546, SF
8 536 or SF537. ” (*See* Preliminary Approval Order Dkt. # 110, ¶ 2).

10 4. The Court finds that the Notice provided to the Settlement Class pursuant to the
11 Settlement Agreement and the Preliminary Approval Order (Dkt. #110) and consisting of first-class
12 U.S. mail sent directly to members of the Settlement Class, and a settlement website, together with
13 toll free telephone line has been successful and was (1) the best notice practicable under the
14 circumstances, (2) constituted notice that was reasonably calculated, under the circumstances, to
15 apprise the Settlement Class of the pendency of the Litigation and their rights to object to and/or
16 exclude themselves from the Settlement Agreement and to appear at the Final Approval Hearing;
17 (3) was reasonable and constituted due, adequate, and sufficient notice to all individuals entitled to
18 receive notice; and (4) fulfilled all applicable requirements of the Federal Rules of Civil Procedure,
19 the Due Process Clause, and the rules of the Court.

21 5. No member of the Settlement Class validly objected to any of the terms of the
22 Settlement Agreement. The following seven members of the Settlement Class timely requested
23 exclusion from the Settlement: Christie Benevich; Karen Curtis; Michele Johnson; Matthew Klein;
24 Richard Milestone; Tamera Walters; and Eric Willacker (the “Opt Outs”). These individuals are
25 hereby excluded from any and all terms of the Settlement Agreement. Pursuant to Federal Rule of
26 Civil Procedure 23(c)(3), all members of the Settlement Class, other than the Opt Outs, are bound
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1 by this Final Judgment and by the terms of the Settlement Agreement. This Court gives final
2 approval to the Settlement and finds that the Settlement Agreement is fair, reasonable, adequate,
3 and in the best interests of the members of the Settlement Class. The consideration provided under
4 the Settlement Agreement constitutes fair value given in exchange for the release of the Released
5 Claims against the Released Parties. The Court finds that the consideration to be paid to the members
6 of the Settlement Class is reasonable, and in their best interests, considering the total value of their
7 claims compared to the disputed factual and legal circumstances of the Litigation, and the potential
8 risks and likelihood of success of pursuing litigation on the merits. The complex legal and factual
9 posture of this case and the fact that the Settlement is the result of arms' length negotiations between
10 the Parties support this finding. The Court finds that these facts, combined with the lack of other
11 indicators of collusion and the Court's observations throughout the litigation, demonstrate that there
12 was no collusion present in the reaching of the Settlement Agreement, implicit or otherwise. *See In*
13 *re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011). This finding is also
14 supported by, among other things, the fact that the Settlement provides monetary benefits to the
15 Settlement Class that are not disproportionate to the attorneys' fees and expenses awarded to Class
16 Counsel or the Class Representative; and the benefits provided to the Settlement Class are
17 appropriate under the circumstances of this case. The Court has specifically considered the factors
18 relevant to class settlement approval including, *inter alia*, the strength of the Plaintiff's case; the
19 risk, expense, complexity and likely duration of further litigation; the risk of not maintaining class
20 action status throughout trial; the relief provided for in the settlement; the extent of discovery
21 completed and stage of the proceedings; the experience and views of counsel; and the reaction of
22 members of the Settlement Class to the proposed Settlement (including the claims submitted and
23 lack of any opt-outs or objections)—and upon consideration of such factors finds that the Settlement
24 is fair, reasonable, and adequate as to, and in the best interests of, the Settlement Class.
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1 6. The Court finds that the Class Representative and Class Counsel adequately
2 represented the Settlement Class for the purposes of litigating this matter and entering into and
3 implementing the Settlement Agreement.

4 7. Accordingly, the Settlement is hereby finally approved in all respects, and the Parties
5 and their counsel are hereby directed to implement and consummate the Settlement Agreement
6 according to its terms and provisions. The Settlement Agreement is hereby incorporated into this
7 Final Judgment in full and shall have the full force of an Order of this Court.

8 8. This Court hereby dismisses the Litigation, as identified in the Settlement Agreement,
9 on the merits and with prejudice.

10 9. Upon entry of this Final Judgment, Plaintiff, the members of the Settlement Class,
11 and each of their respective heirs, assigns, successors, agents, attorneys, executors and
12 representatives (the “Releasing Parties”) shall be deemed to have, and by operation of the Final
13 Judgment, shall have, fully, finally, and irrevocably released State Farm and all of its past or present
14 directors, officers, employees, agents, insurers, shareholders, members, attorneys, advisors,
15 consultants, representatives, partners, affiliates, related companies, parents, subsidiaries (whether or
16 not wholly owned), predecessors, successors, and assigns (collectively, the “Released Parties”),
17 from any and all liabilities, claims, causes of action, damages (whether actual, compensatory,
18 statutory, punitive of any other type), penalties, costs, attorneys’ fees, losses or demands, whether
19 known or unknown, existing or suspected or unsuspected, that were or could have been asserted
20 against State Farm based on the factual allegations contained in the Complaint filed in the Action,
21 or that relate to or arise out of State Farm’s denial, termination, or limitation of Personal Injury
22 Protection (PIP) medical or hospital benefits based on Maximum Medical Improvement (MMI).

23 10. Upon the entry of this Final Judgment, the above releases of claims and the Settlement
24 Agreement will be binding on, and will have *res judicata* and preclusive effect in, all pending and
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1 future lawsuits or other proceedings maintained by or on behalf of Plaintiff and all other members
2 of the Settlement Class and Releasing Parties.

3 11. The Court adjudges that the payment of \$4,625,000.00 in attorneys' fees and litigation
4 expenses in the amount of \$48,239.00 (the "Fee Award") is fair and reasonable for the following
5 reasons and those stated in Court. In assessing the requested attorneys' fees, the Court has considered
6 the relief achieved for the Settlement Class, the time and effort devoted by Class Counsel as
7 demonstrated by their sworn declaration, and the complexity of the legal and factual issues involved.
8 The Court finds that the Fee Award to Class Counsel identified above is fair and reasonable under
9 both a common fund approach and a lodestar approach. *See Vizcaino v. Microsoft Corp.*, 290 F.3d
10 1043, 1048-50 (9th Cir. 2002) (finding in this Circuit, a 25% fee is the accepted "benchmark" in
11 common fund cases); *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67 (9th Cir. 1975) (lodestar
12 approach).

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15 12. The Court further adjudges that the payment of an incentive award in the amount of
16 \$10,000.00 (the "Incentive Award") to Mr. Durant to compensate him for his efforts and
17 commitment on behalf of the Settlement Class is fair, reasonable, and justified under the
18 circumstances of this case. *See Radcliffe v. Experian Info. Solutions, Inc.*, 715 F.3d 1157 (9th Cir.
19 2013). Such payment shall be made pursuant to and in the manner provided by the terms of the
20 Settlement Agreement.

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22 13. The Court hereby approves payment from the Gross Settlement Amount of the
23 administrative expenses of Rust Consulting, which are currently estimated to amount to \$46,970.00.

24 14. Except as otherwise set forth in this Order and the Settlement Agreement, the Parties
25 shall bear their own costs and attorneys' fees.

26 15. The Parties, without further approval from the Court, are hereby permitted to agree to
27 and to adopt such amendments, modifications, and expansions of the Settlement Agreement and its
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